

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman  
Dr. Anthony J. Baratta  
Dr. Kenneth L. Mossman

In the Matter of  
FLORIDA POWER & LIGHT COMPANY  
(St. Lucie Plant, Unit 1)

Docket No. 50-335-LA  
ASLBP No. 11-911-01-LA-BD01  
October 19, 2011

MEMORANDUM AND ORDER

(Denying Petition for Leave to Intervene and Request for Hearing)

Before the Licensing Board is a petition for leave to intervene and request for hearing filed by SaproDani Associates (SaproDani) by and through its single member and senior consultant, Thomas Saporito.<sup>1</sup> The petition challenges the license amendment request by Florida Power & Light Company (FPL) to increase the core power level of its St. Lucie Plant Unit 1 nuclear power reactor in St. Lucie County, Florida, from 2700 Megawatts thermal (MWt) to 3020 MWt.<sup>2</sup> For the reasons discussed below, we find that SaproDani has demonstrated standing to intervene in this proceeding. However, because it has not proffered at least one admissible contention, we deny SaproDani's hearing request and petition for leave to intervene.

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<sup>1</sup> SaproDani Associates' Petition for Leave to Intervene and Request for Hearing (Aug. 8, 2011) [hereinafter Petition].

<sup>2</sup> Florida Power & Light Company, St. Lucie Plant, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, and Opportunity for a Hearing and Order Imposing Procedures for Document Access to Sensitive Unclassified Non-Safeguards Information, 76 Fed. Reg. 33,789, 33,790 (June 9, 2011).

I. BACKGROUND

On November 22, 2010, FPL submitted its application for a license amendment, requesting an “increase in core thermal power [that] will be approximately 12 percent, including a 10 percent power uprate and a 1.7 percent measurement uncertainty recapture, over the current licensed core thermal power level.”<sup>3</sup> On June 2, 2011, the NRC issued a notice (later published in the Federal Register on June 9, 2011) in which it acknowledged receipt of FPL’s license amendment application and provided sixty days from the date of the Federal Register notice for interested persons to request a hearing on the application.<sup>4</sup> Saprodani timely filed its hearing request and petition to intervene on August 8, 2011.<sup>5</sup> FPL and the NRC Staff filed answers opposing Saprodani’s hearing request and petition to intervene on September 2, 2011.<sup>6</sup> Saprodani did not file a reply to FPL’s and the NRC Staff’s answers.

II. STANDARDS GOVERNING STANDING AND CONTENTION ADMISSIBILITY

In a proceeding regarding the amendment of a license granted under the Atomic Energy Act (AEA), section 189a of the AEA requires the NRC to “grant a hearing upon the request of any person whose interest may be affected by the proceeding, and . . . admit any such person as a party to such proceeding.”<sup>7</sup> To be granted a hearing, a petitioner seeking a hearing must demonstrate standing pursuant to 10 C.F.R. § 2.309(d) and proffer at least one admissible contention in accordance with 10 C.F.R. § 2.309(f).<sup>8</sup>

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<sup>3</sup> Id. An increase of this magnitude is categorized as an Extended Power Uprate (EPU). Id.

<sup>4</sup> Id. at 33,790-92.

<sup>5</sup> Petition at 1.

<sup>6</sup> See Florida Power & Light Company’s Answer Opposing the Petition to Intervene and Request for Hearing of Saprodani Associates (Sept. 2, 2011) at 1-2 [hereinafter FPL Answer]; NRC Staff’s Answer to Saprodani Associates’ Petition for Leave to Intervene and Request for Hearing (Sept. 2, 2011) at 1 [hereinafter NRC Staff Answer].

<sup>7</sup> 42 U.S.C. § 2239(a)(1)(A).

<sup>8</sup> 10 C.F.R. § 2.309(a).

A. Standing

To show standing under 10 C.F.R. § 2.309(d), a petitioner's hearing request must state (1) the petitioner's name, address, and telephone number, (2) "[t]he nature of [its] right under the [AEA, the National Environmental Policy Act (NEPA), or any other applicable statute] to be made a party to the proceeding," (3) "[t]he nature and extent of [its] property, financial or other interest in the proceeding," and (4) "[t]he possible effect of any decision or order that may be issued in the proceeding on [its] interest."<sup>9</sup> In evaluating whether these standing requirements have been met, the NRC follows contemporaneous judicial concepts of standing, which call for a particularized showing of "a 'concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision,' where the injury is 'to an interest arguably within the zone of interests protected by the governing statute.'"<sup>10</sup> The Commission has emphasized that once a petitioner successfully demonstrates standing, it "will then be free to assert any contention, which, if proved, will afford [it] the relief [it] seek[s], i.e., the rejection or modification of" an applicant's license in a way that will remedy the petitioner's injuries.<sup>11</sup>

In most licensing proceedings, petitioners are presumed to have standing if they live or have frequent contacts within fifty miles of the facility that is the subject of the proceeding.<sup>12</sup> But in license amendment proceedings, petitioners may not claim "standing simply upon a residence

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<sup>9</sup> 10 C.F.R. § 2.309(d)(1); see also Calvert Cliffs 3 Nuclear Project, LLC, & Unistar Nuclear Operating Servs., LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-09-20, 70 NRC 911, 915 (2009).

<sup>10</sup> Calvert Cliffs, CLI-09-20, 70 NRC at 915 (citing Cleveland Elec. Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993)). The statutes articulating the relevant zone of interests in NRC proceedings are the AEA and NEPA. See Tennessee Valley Auth. (Sequoyah Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 1), LBP-02-14, 56 NRC 15, 23 (2002).

<sup>11</sup> Yankee Atomic Elec. Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

<sup>12</sup> See Calvert Cliffs, CLI-09-20, 70 NRC at 915-16 (citations omitted).

or visits near the plant, unless the proposed action quite ‘obvious[ly]’ entails an increased potential for offsite consequences.”<sup>13</sup>

Organizations are permitted to represent their members if they adequately demonstrate representational standing. To do so, an organization must (1) show that at least one of its members would be affected by the agency’s approval of the requested license, (2) identify such members, and (3) establish (preferably through an affidavit) that such members of the organization have authorized it to act as the members’ representative and to request a hearing on the members’ behalf.<sup>14</sup> Moreover, each organization

member seeking representation must qualify for standing in his or her own right; the interests that the representative organization seeks to protect must be germane to its own purpose; and neither the asserted claim nor the requested relief must require an individual member to participate in the organization’s legal action.<sup>15</sup>

If a petitioner fails to show standing pursuant to 10 C.F.R. § 2.309(d), a Board may, in the alternative, grant discretionary standing “when at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held.”<sup>16</sup>

B. Contention Admissibility

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<sup>13</sup> Commonwealth Edison Co. (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 191 (1999) (quoting Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989)) (emphasis added).

<sup>14</sup> Consumers Energy Co. et al. (Palisades Nuclear Plant), CLI-07-18, 65 NRC 399, 409 (2007).

<sup>15</sup> Id. An organization may claim standing on its own behalf, but that issue is irrelevant to the circumstances of this proceeding. See Florida Power & Light Co. (Turkey Point Units 6 and 7), LBP-11-6, 73 NRC \_\_, \_\_ (slip op. at 7 n.13) (Feb. 28, 2011) (referencing Int’l Uranium (USA) Corp. (White Mesa Uranium Mill), CLI-01-21, 54 NRC 247, 252 (2001)).

<sup>16</sup> 10 C.F.R. § 2.309(e).

Even if a petitioner successfully establishes standing, it must also proffer at least one admissible contention to have its hearing request granted.<sup>17</sup> To be admissible, each contention must:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted . . . ;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;
- (vi) . . . [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief . . . .<sup>18</sup>

Petitioners may not raise in adjudicatory proceedings contentions attacking the agency's rules and regulations (or contentions that are the subject of ongoing rulemakings).<sup>19</sup> "[A]ny contention that amounts to an attack on applicable statutory requirements or represents a challenge to the basic structure of the Commission's regulatory process must be rejected."<sup>20</sup> The Commission has emphasized that its contention admissibility requirements are "strict by design" in order to "help assure that our hearing process will be appropriately focused upon disputes that can be

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<sup>17</sup> Cf. id. § 2.309(a), (f).

<sup>18</sup> Id. § 2.309(f)(1)(i)-(vi).

<sup>19</sup> Id. § 2.335(a); see Duke Energy Corp. (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999).

<sup>20</sup> Energy Nuclear Operations, Inc. (Indian Point, Units 2 and 3), LBP-08-13, 68 NRC 43, 64 (2008).

resolved in the adjudication.”<sup>21</sup> Therefore, to be admissible, contentions must include specific grievances beyond mere notice pleading.<sup>22</sup> Moreover, the Commission has instructed that “[w]hile a board may view a petitioner’s supporting information in a light favorable to the petitioner, . . . our contention admissibility rules . . . require the petitioner (not the board) to supply all the elements for a valid intervention petition.”<sup>23</sup>

### III. BOARD RULING ON HEARING REQUEST

#### A. Standing

Saprodani claims that it has standing because “granting the license amendment request will result in adverse health and safety risks” to the organization and its member “from emissions of radioactive materials and fission products.”<sup>24</sup> Moreover, Saprodani professes to be covered by the fifty-mile proximity presumption because the organization and its sole member live and work within fifty miles of the St. Lucie Nuclear Power Plant facility.<sup>25</sup> In the alternative, Saprodani asserts it is entitled to discretionary standing under Section 2.309(e) because it “will be presenting evidence in connection with the local health, safety, environmental, and social issues created by the [St. Lucie Plant] Unit 1, license amendment request” and “provide local insight, information and evidence that cannot be provided by the Applicant or other parties (if

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<sup>21</sup> Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 3), CLI-08-17, 68 NRC 231, 233 (2008) (citations omitted).

<sup>22</sup> See Entergy Nuclear Generation Co. & Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), CLI-10-15, 71 NRC \_\_, \_\_ (slip op. at 5) (June 17, 2010) (citing Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-03-17, 58 NRC 419, 428-29 (2003)).

<sup>23</sup> AmerGen Energy Co., LLC (Oyster Creek Nuclear Generating Station), CLI-09-7, 69 NRC 235, 260 (2009).

<sup>24</sup> Petition at 7.

<sup>25</sup> Id. at 5. Attached to Saprodani’s Petition is a Declaration of its member, Thomas Saporito, stating his address and describing it as within fifty miles of the facility. See id., Exh. 1, Declaration of Thomas Saporito at 1-2 (Aug. 8, 2011) [hereinafter Saporito Decl.].

other parties are admitted).<sup>26</sup> Saprodani further argues that it is entitled to discretionary standing because its interests are unique, no other means are available to protect its interests, it is not raising inappropriate issues, and its participation will not inappropriately widen or delay this proceeding.<sup>27</sup> Finally, Saprodani purports to meet “prudential standing requirements” due to its protection under the AEA and NEPA.<sup>28</sup>

FPL and the NRC Staff argue that Saprodani has not adequately demonstrated organizational, representational, or discretionary standing.<sup>29</sup>

This license amendment proceeding does not automatically implicate the fifty-mile proximity presumption afforded to petitioners in reactor construction permit and license renewal proceedings. However, we agree with other licensing boards that have regarded extended power uprate (EPU) proceedings as necessarily triggering application of the fifty-mile proximity presumption given that such license applications entail an obvious increase in the potential for offsite consequences.<sup>30</sup> Accordingly, if any Saprodani member falls within the proximity presumption, then Saprodani itself could qualify for representational standing.

It is undisputed that the address of Saprodani member Thomas Saporito, mentioned in the signed Declaration attached to Saprodani’s petition, is within fifty miles of the St. Lucie facility.<sup>31</sup> Therefore, he may, on his own behalf, invoke the proximity presumption to intervene in this proceeding.

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<sup>26</sup> Id. at 8.

<sup>27</sup> Id.

<sup>28</sup> Id. at 8-9.

<sup>29</sup> FPL Answer at 9-15; NRC Staff Answer at 6-10.

<sup>30</sup> See PPL Susquehanna LLC (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-10, 66 NRC 1, 18, aff’d on other grounds, 66 NRC 101 (2007); Entergy Nuclear Vermont Yankee, L.L.C., & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP-04-28, 60 NRC 548, 553 (2004).

<sup>31</sup> Saporito Decl. at 1-2; FPL Answer at 7; NRC Staff Answer at 9.

Saprodani has made the minimal requisite showing for representational standing under the Commission's test in Palisades.<sup>32</sup> The proximity of Saprodani's member, Mr. Saporito, to the St. Lucie facility, renders him presumptively affected by the agency's approval of FPL's license amendment request, and Saprodani has clearly identified Mr. Saporito in its petition. The fact that Mr. Saporito is the sole member of Saprodani is irrelevant to whether the organization itself may represent him in this proceeding. Although Mr. Saporito does not explicitly authorize Saprodani to represent him, his signature on Saprodani's petition and his attached declaration go beyond mere tacit approval of Saprodani's representation. Saprodani could be more explicit about what its organizational purpose is, but the petition's description of Saprodani's purpose as "protecting the health and safety of the public and the environment" is adequate.<sup>33</sup> Nowhere in Saprodani's petition is there an indication that membership in the organization is contingent on a member's agreement to participate in this legal action. This suffices for the minimal showing of organizational purpose for representational standing. Therefore, we find that Saprodani has representational standing.<sup>34</sup>

B. Contention Admissibility

Saprodani raises four contentions in its petition. In support of each contention, Saprodani alleges only that the Applicant and NRC Staff have violated NEPA, and not the AEA.<sup>35</sup> We therefore interpret Saprodani's contentions as environmental, and not safety, contentions.

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<sup>32</sup> See Palisades, CLI-07-18, 65 NRC at 409.

<sup>33</sup> Petition at 9.

<sup>34</sup> Although moot due to our finding of Saprodani's standing, discretionary standing under 10 C.F.R. § 2.309(e) is unavailable to Saprodani because we have not admitted any other party to this proceeding.

<sup>35</sup> Petition at 14-20.

To the extent any of Saprodani's contentions complain of any failure by the NRC Staff,<sup>36</sup> the NRC Staff has yet to complete any draft or final environmental or safety review of FPL's LAR. Therefore, to be admissible at this stage in the proceeding, any contention must challenge the application itself.<sup>37</sup>

1. Contention SA-1

The NRC and the licensee failed to adequately consider and address the impacts of increased stress to the reactor vessel with respect to imbrittlement [sic] of the reactor vessel to date; and the consequences of the reactor vessel cracking or shattering as a result of increasing the licensed core thermal power level for Unit 1.<sup>38</sup>

In support of Contention SA-1, Saprodani alleges that FPL's license amendment request (LAR) is deficient under NEPA because it ignores potential environmental impacts resulting from a release of radioactive substances from reactor vessel cracking or shattering in a "loss-of-coolant" core-melt event similar to that which occurred recently in Japan.<sup>39</sup> Saprodani maintains that there are "factual differences concerning the extent and impact of a [loss-of-coolant-accident] due to a failure of the nuclear reactor vessel because of increased stress brought by the proposed license amendment request."<sup>40</sup> FPL and the NRC Staff argue that Contention SA-

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<sup>36</sup> See infra Parts III.B.2-4.

<sup>37</sup> 10 C.F.R. § 2.309(f)(1)(vi); see also id. § 2.309(f)(2) ("Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner."). We note here that although the sufficiency of FPL's application and the NRC Staff's environmental review of that application are proper targets of contentions, the sufficiency of the NRC Staff's safety review of the application is not a proper target of contentions in NRC adjudications. See id.; Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC \_\_, \_\_ (slip op. at 13 n.56) (Sept. 30, 2010).

<sup>38</sup> Petition at 14.

<sup>39</sup> Id. at 14-15.

<sup>40</sup> Id. at 15.

1 is inadmissible because it lacks adequate support and does not raise a genuine dispute with FPL's LAR.<sup>41</sup>

Contention SA-1 can be fairly construed as a contention that FPL's LAR omits required information. However, other than hypothesizing that there will be a "failure of the nuclear reactor vessel because of increased stress brought by the proposed license amendment request,"<sup>42</sup> Contention SA-1 does not provide "sufficient information to show that a genuine dispute exists" with the LAR.<sup>43</sup> Additionally, the petition lacks "alleged facts or expert opinions" to support the contention.<sup>44</sup> Because Saprodani neither explains the "factual differences" it has with FPL's LAR nor provides alleged facts or expert opinions to support them, the contention is deficient under 10 C.F.R. § 2.309(f)(1)(v) and (vi).<sup>45</sup> Contention SA-1 is thus inadmissible.

## 2. Contention SA-2

The NRC and the licensee failed to adequately consider and address the significant increase in population within a 50-mile area of the SLNP [St. Lucie Nuclear Plant]; and the impacts that a serious nuclear accident would have on the inability of the increased populace to timely evacuate from a 50-mile area of the SLNP in connection with increasing the licensed core thermal power level for Unit 1.<sup>46</sup>

Citing a news article from the Associated Press, Contention SA-2 claims that the Environmental Report (ER) of FPL's LAR accounts for neither the increase in population around the St. Lucie facility since it was first licensed nor the local health impacts to such a larger

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<sup>41</sup> FPL Answer at 24-26; NRC Staff Answer at 13-14.

<sup>42</sup> Petition at 15.

<sup>43</sup> 10 C.F.R. § 2.309(f)(1)(vi).

<sup>44</sup> Id. § 2.309(f)(1)(v).

<sup>45</sup> See Southern Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4), LBP-09-3, 69 NRC 139, 154 (2009) (citing Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), review declined, CLI-94-2, 39 NRC 91 (1994); Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992)).

<sup>46</sup> Petition at 15.

population around the facility during evacuation.<sup>47</sup> Contention SA-2 also states that “if the new and significant health impacts are genuine, it is hard to imagine a more material impact.”<sup>48</sup> FPL and the NRC Staff argue Contention SA-2 is inadmissible because it lacks supporting facts or expert opinion, is immaterial to and beyond the scope of this proceeding, and is an impermissible challenge to NRC regulations.<sup>49</sup>

Contention SA-2 fails to address any specific deficiency in the LAR or in the evacuation plans around St. Lucie. The news article cited in Saprodani’s petition complains broadly of the ignorance to population growth of all nuclear power plants around the country since their initial licensing, rather than raising any criticism of the St. Lucie emergency plans. Saprodani references South Florida’s population growth and the fact that St. Lucie Plant Unit 1 “is physically located on Hutchison Island with a two-lane access road in and out,”<sup>50</sup> but fails to explain the relevance of these facts to the proposed EPU. Saprodani might be concerned with the sufficiency of the current St. Lucie evacuation plan, but Contention SA-2 does not raise any challenge to the LAR itself. Therefore, the contention is inadmissible under 10 C.F.R. § 2.309(f)(1)(vi) for not raising a genuine dispute with the LAR.<sup>51</sup>

An EPU such as the one in FPL’s LAR changes only a limited portion of FPL’s current operating license and we infer from the structure of 10 C.F.R. § 50.47(a)(1)(i) that a license amendment request does not require an updated or separate emergency plan unless such a plan would be germane to the type of LAR under review or is part of a licensee’s periodic

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<sup>47</sup> Id. at 16-17.

<sup>48</sup> Id. at 17.

<sup>49</sup> FPL Answer at 27-31; NRC Staff Answer at 15-18.

<sup>50</sup> Petition at 16.

<sup>51</sup> See Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-36, 60 NRC 631, 639-40 (2004) (affirming licensing board ruling that a failure of petitioner “to cite even a single specific deficiency in the application” precludes satisfaction of the specificity requirement of 10 C.F.R. § 2.309(f)(1)(vi) (internal quotation omitted)).

update of emergency plans.<sup>52</sup> The NRC explicitly requires an emergency plan for initial reactor operating licenses but does not require them for reactor operating license renewals.<sup>53</sup> We view the scope of the agency's review of FPL's LAR as more analogous to the limited licensing review conducted for a license renewal request than to a request for a construction permit. Saprodani does not explain why the LAR itself should result in any changes to the evacuation plan. Thus, Saprodani's concern in Contention SA-2 is not an issue that is material to the NRC's licensing decision in this proceeding. Consequently, Contention SA-2 is also inadmissible for failing to meet the materiality requirement of 10 C.F.R. § 2.309(f)(1)(iv).<sup>54</sup>

### 3. Contention SA-3

The NRC and the licensee failed to adequately consider and address the significant increase in heat generated by the SLNP and discharged into the environment via the surrounding waters of the SLNP; and the harmful affects [sic] on marine life and vegetation in connection with increasing the licensed core thermal power level for Unit 1.<sup>55</sup>

Contention SA-3 asserts that FPL's ER does not "sufficiently assess . . . the impacts of continued operation of the [St. Lucie Plant] Unit 1, at a greater core thermal power level on the local environmental justice communities and the marine life and vegetation in the waters around the nuclear plant."<sup>56</sup> Moreover, Contention SA-3 insists that the ER "is inadequate because it fails to consider the lack of fish consumption advisories, or awareness of associated risks among the minority and low-income populations."<sup>57</sup> Saprodani surmises that fishermen in the

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<sup>52</sup> See 10 C.F.R. Part 50, app. E.

<sup>53</sup> See 10 C.F.R. § 50.47(a)(1)(i).

<sup>54</sup> If Saprodani is concerned about the sufficiency of the ongoing oversight of St. Lucie and its current evacuation plan, it has the option of requesting a modification, suspension, or revocation of FPL's operating license under 10 C.F.R. § 2.206.

<sup>55</sup> Petition at 17.

<sup>56</sup> Id. at 17-18.

<sup>57</sup> Id. at 18.

water around St. Lucie do not know that the food they catch may contain radioactive isotopes and that there has been no warning from FPL regarding this threat.<sup>58</sup>

FPL and the NRC Staff counter that Contention SA-3 is inadmissible for being immaterial to the NRC's licensing decision in this proceeding, lacking the requisite support, and not raising a genuine dispute of material fact or law.<sup>59</sup>

FPL's ER discusses the structure of its water discharge systems and describes the effects that increased thermal discharge will have on certain species around the plant.<sup>60</sup> The ER also details the effects of the EPU on radiological discharges and offsite radiation doses.<sup>61</sup> Contention SA-3 does not explain what is flawed with these descriptions. Therefore, Contention SA-3 does not raise a genuine dispute of material fact or law with FPL's LAR and is inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(vi). Furthermore, Contention SA-3 does not provide any alleged facts or expert opinion that challenge FPL's analysis. It is also, therefore, inadmissible pursuant to 10 C.F.R. § 2.309(f)(1)(v).

#### 4. Contention SA-4

[T]he NRC and the licensee failed to adequately consider and address the alternatives to the license amendment request to offset the need for increased output capacity of the SLNP Unit 1, through energy conservation, installation of energy efficient appliances, and renewable energy sources.<sup>62</sup>

Contention SA-4 asserts that wind and solar power generation, installation of energy efficient electrical appliances, and energy conservation "would actually reduce the load-demand on FPL's electrical grid to the extent that FPL would be forced to shut-down existing power

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<sup>58</sup> Id.

<sup>59</sup> FPL Answer at 31-35; NRC Staff Answer at 19-21.

<sup>60</sup> See Attachment 2, License Amendment Request, Extended Power Uprate, Supplemental Environmental Report, Florida Power & Light, St. Lucie Nuclear Plant, Units 1 and 2 at 2-19 to 2-22 [hereinafter ER].

<sup>61</sup> Id. at 2-23 to 2-30.

<sup>62</sup> Petition at 19.

plants for lack of need.”<sup>63</sup> Thus, Contention SA-4 maintains that FPL’s ER has inadequately examined alternative energy, energy efficiency, and energy conservation as alternatives to the requested EPU.<sup>64</sup> FPL and the NRC Staff respond that Contention SA-4 is inadmissible for failure to supply alleged factual or expert support for its claims and for not raising a genuine dispute of material fact with FPL’s LAR.<sup>65</sup>

In support of Contention SA-4, Saprodani references 10 C.F.R. § 51.53(c)(3) for the proposition that a license amendment applicant must prepare an ER “assess[ing] the potential for renewable energy and energy efficiency and conservation as an alternative to the license amendment request.”<sup>66</sup> But § 51.53(c)(3) merely requires a license renewal applicant to include in its ER “any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware.”<sup>67</sup> It does not apply to license amendment applicants such as FPL in the instant proceeding.<sup>68</sup>

Nevertheless, Saprodani may challenge the accuracy and sufficiency of FPL’s LAR, of which its ER is a part. Contention SA-4 does not, however, raise any specific challenge to the adequacy of the cost-benefit analysis in the ER or FPL’s reference to the alternatives and energy conservation analyses in the Florida Public Service Commission’s ruling on FPL’s Petition to Determine Need.<sup>69</sup> Consequently, the contention does not present a genuine dispute of material fact with FPL’s LAR and is thus deficient under the requirements of 10 C.F.R. § 2.309(f)(1)(vi). Moreover, Saprodani fails to allege facts or expert opinion to support its

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<sup>63</sup> Id. at 19-20.

<sup>64</sup> Id. at 20.

<sup>65</sup> FPL Answer at 35-39; NRC Staff Answer at 21-23.

<sup>66</sup> Petition at 19.

<sup>67</sup> 10 C.F.R. § 51.53(c)(3)(iv).

<sup>68</sup> Id. § 51.53(b).

<sup>69</sup> See ER at 2-6 to 2-7, 2-15 to 2-16.

assertion that renewable electricity sources and conservation measures could eliminate the need for FPL's EPU, as required by 10 C.F.R. § 2.309(f)(1)(v). Therefore, Contention SA-4 is inadmissible.

IV. CONCLUSION

For the foregoing reasons, we find that Saprodani Associates has demonstrated standing to intervene in this proceeding pursuant to 10 C.F.R. § 2.309(d) but that it has failed to proffer at least one admissible contention pursuant to 10 C.F.R. § 2.309(f). Accordingly, we deny Saprodani Associates' petition for leave to intervene and hearing request.

In accordance with the provisions of 10 C.F.R. § 2.311, any appeal to the Commission from this Memorandum and Order must be taken within ten (10) days after it is served.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>70</sup>

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William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. Anthony J. Baratta  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. Kenneth L. Mossman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
October 19, 2011

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<sup>70</sup> A copy of this Memorandum and Order was sent this date by the agency's E-Filing System to (1) Counsel for the NRC Staff; (2) Counsel for FPL; and (3) Thomas Saporito, representative of Saprodani Associates.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
)  
FLORIDA POWER & LIGHT COMPANY ) DOCKET NO. 50-335-LA  
(St. Lucie Plant, Unit 1) )  
)  
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (Denying Petition for Leave to Intervene and Request for Hearing) (LBP-11-29), dated October 19, 2011, have been served upon the following persons by Electronic Information Exchange.

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FLORIDA POWER & LIGHT COMPANY, St. Lucie Plant, Unit 1 – Docket No. 50-335-LA  
MEMORANDUM AND ORDER (Denying Petition for Leave to Intervene and Request for Hearing)  
(LBP-11-29)

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[Original signed by Christine M. Pierpoint]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 19<sup>th</sup> day of October 2011